

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

LEONARD H. SNELL

* **CIVIL ACTION NO. 06-1238**

Versus

* **JUDGE JAMES**

TERRAMITE CORPORATION

* **MAGISTRATE JUDGE HAYES**

MEMORANDUM RULING AND ORDER

Before the undersigned Magistrate Judge, on reference from the District Court, is a Motion to Remand¹ filed by Plaintiff, Leonard H. Snell (“Snell”) (Doc. #10). After an extensive review of the law and the evidence submitted by each side, for the reasons stated below, the undersigned finds that jurisdiction in this court is improper, and Plaintiff’s Motion to Remand is **GRANTED**.

BACKGROUND

Plaintiff filed the current motion seeking remand to State Court based on a defect in the removal procedure. Defendant filed a response agreeing that the case should be remanded to State Court. (Doc. #12).

LAW AND ANALYSIS

Plaintiff filed suit against defendant on June 6, 2006, in the Fourth Judicial District Court for the Parish of Morehouse, State of Louisiana, seeking damages for serious burns to more than

¹As this is not one of the motions excepted in 28 U.S.C. § 636(b)(1)(A), nor dispositive of any claim on the merits within the meaning of Rule 72 of the Federal Rules of Civil Procedure, this ruling is issued under the authority thereof, and in accordance with the standing order of this court. Any appeal must be made to the district judge in accordance with Rule 72(a) and L.R. 74.1(W).

fifty percent of his body allegedly sustained as a result of a defect in the defendant's product. Service was made by long-arm service on June 19, 2006.² On July 21, 2006, more than 30 days after being served with the original petition, Defendant filed a Notice of Removal to Federal Court on the basis of diversity of jurisdiction pursuant to 28 U.S.C. § 1446(a).

The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

28 U.S.C. § 1446(b). As the original petition contained sufficient facts to set forth the basis for a claim that jurisdiction in this court was proper, the Notice of Removal was not timely filed in accordance with 28 U.S.C. § 1446(b). Since the Notice of Removal was filed more than 30 days after Defendant was served with the original petition, and noting that Defendant does not oppose the motion to remand, the Motion to Remand (Doc. #10) is hereby **GRANTED and it is ORDERED that this case be Remanded Forthwith to the Fourth Judicial District Court for the Parish of Morehouse, State of Louisiana.**

THUS DONE AND SIGNED this 29th day of August, 2006, in Monroe, Louisiana.



KAREN L. HAYES
U. S. MAGISTRATE JUDGE

²Service is evidenced by the *Domestic Return Receipt* showing receipt by certified mail of a certified copy of the petition sent to the registered agent for service of process.